

Module 2: Methods of Property Conveyance

Module 2 Learning Objectives: Module 2 covers various methods the BLM and the FS uses to convey property. You will also find advice here on how to avoid administrative and legal issues with regard to land transactions. Upon completion, you should be able to:



- Give examples of [voluntary](#) and [involuntary land transactions](#).
- Describe two common kinds of [deeds](#).
- Explain the importance of [recording deeds](#).
- Name the requirements for [adverse possession](#).
- Explain [adverse possession against the government](#).
- Define [prescriptive easement](#), [eminent domain](#), [condemnation](#), and [just compensation](#).
- Name two ways the government can [inappropriately take land](#).
- Define [encumbrance](#), [outstanding right](#), and [reservation](#).



Module 2: Methods of Property Conveyance

Methods of Property Conveyance

- The typical way estates or property are transferred is by voluntary transaction with the landowner; by purchase, donation or exchange; using a deed.
- It is also possible for estates or property to transfer from an owner involuntarily, without their consent, through certain kinds of use or through a court action. Involuntary transactions are rarely used and then, only in very special and localized circumstances.

Deed: A legal document that conveys an estate or interest in real property



Module 2: Methods of Property Conveyance - Deeds

Deeds:

In voluntary transactions, estates are transferred by deed.

A deed is a legal document that conveys an estate or interest in real property. It transfers ownership of the property from the former owner, the grantor, to the new owner, the grantee.

The [statute of frauds](#), a law modeled after the English 1866 Statute of Frauds, requires that interest in real property **may be conveyed only by written instrument or deed** in order to be enforceable. Therefore, although a deed may look like a fairly simple document, it embodies the entire purpose of the transaction and is an essential component of every real estate transaction.

The two most commonly used types of property deeds are:

- **Warranty Deeds.**
- **Quitclaim Deeds.**

[Statute of frauds](#): State law requiring that certain contracts must be in writing, such as a contract for the sale of land, and signed in order to be binding.



Module 2: Methods of Property Conveyance - Deeds

Two Common Types of Deeds: Warranty and Quit Claim Deed

Warranty Deed



In a [warranty deed](#), the owner guarantees that they hold clear title to the property; and have the right to convey it. Sometimes called a general warranty deed, it is a full contractual obligation by the grantor to stand by the title of the land being conveyed. A warranty deed expressly guarantees the grantor's good and [marketable title](#) to the property and offers the **best protection for the buyer**.

The guarantees in the warranty deed are called [warranties of title](#) (or *covenants of title*) and usually include:

- That the grantor has **clear title** to the land;
- That there are **no encumbrances** on the land except as disclosed in the deed;
- That the grantee will have [quiet enjoyment](#) of the property; and
- That the grantor will **defend the title**.



Module 2: Methods of Property Conveyance - Deeds

- **Warranty deed**: A type of deed where the grantor guarantees to hold clear title to a piece of real estate, has a right to sell it to the grantee, and will warrant against all future claims unless specifically exempted
- **Marketable title**: Title that a reasonable buyer would accept because it appears to lack any defects; free reasonable doubt and reasonably free from litigation.
- **Encumbrance**: An interest in real property, held by someone other than the present owner, that affects the title to the property
- **Quiet Enjoyment**: The grantor (seller) promises to protect the grantee (buyer) against anyone who, after the property conveyance, claims to have superior title to the property.



Module 2: Methods of Property Conveyance - Deeds

Quitclaim Deed:

A [quitclaim deed](#) conveys only the grantor's present interest in the land, if any.

A quitclaim deed contains **no warranty of title** and in no way obligates the grantor to defend the title to the land. Therefore, a person conveying property by a quitclaim deed may be conveying nothing or everything.

A quitclaim deed is frequently used to **acquire outstanding interests** which may be [clouding the title](#) to a piece of property or may be used **when there is a question** of whether the landowner has good and marketable title to the property.

[Quitclaim deed](#): A deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid.

[Cloud on title](#) (or Clouded title): An outstanding claim or encumbrance that, if valid, would affect or impair the title to a particular property.



Module 2: Methods of Property Conveyance - Deeds

Example: Quitclaim Deed

1. In 2008, a National Forest acquires a piece of property through a Small Tracts Act interchange, with help from a certain title company. (* National Forests only for Small Tracts Act.)
2. In 2015, the same title company conducts a routine title search on an adjacent property and discovers a contract for deed from 1925 purporting to convey title to a third party, upon completion of the terms of the contract. That contract for deed also includes the property conveyed to the Forest Service in 2008.
3. The title company contacts the previous property owner to alert them to the possible cloud on title.
4. The previous owner contacts the Forest Service and arranges to issue a quitclaim deed to the United States, in order to clear the title.



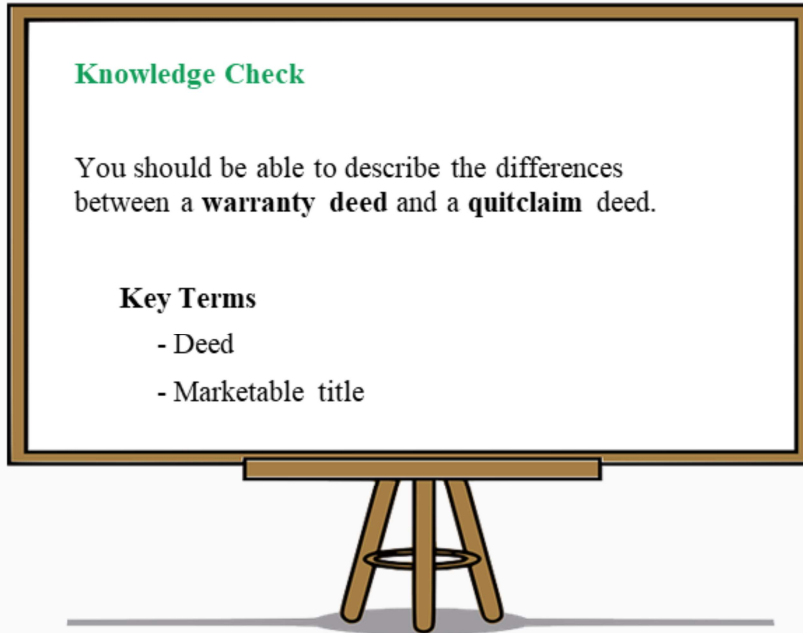
Module 2: Methods of Property Conveyance – Knowledge Check

Knowledge Check

You should be able to describe the differences between a **warranty deed** and a **quitclaim** deed.

Key Terms

- Deed
- Marketable title



Module 2: Methods of Property Conveyance - Deed Recordation

Deed Recordation:

Once the deed has been **signed**, it must be **recorded** at the local county courthouse or recorder's office where the property is physically located (generally in the Recorder or Register of Deeds Office).

By recording the deed in accordance with the law, all persons are considered on constructive notice of the contents of the deed, and thus are on notice of the change in property ownership.

If the deed is not recorded, there is no legal presumption that persons are on notice of the change in ownership. Therefore, a subsequent deed could be signed and recorded, thus defeating the interest of the prior purchaser. Recording statutes vary, so **check your state laws** for details.



Constructive notice: Information or knowledge which, according to law, a person is presumed to acquire by making normal and reasonable inquiries.





Example: The Importance of Recordation



- In 2000, the BLM acquires a road easement from Landowner A, but fails to record the deed in the public records. Therefore, there is no constructive notice of the BLM easement in the County records. However, the BLM did note the Master Title Plat.
- In 2001, Landowner A conveys the entire property to Landowner B. When Landowner B checks the public records prior to acquiring the property, there is no record of the BLM acquiring the road easement. (Module Three covers more about reviewing the public records.)
- The BLM interest in the property is clouded. The BLM may have to pay damages or court costs to Landowner B to resolve the mistake.



- Is this right?



Exception: The Torrens System



Massachusetts and a few other states use **certificates of title instead of deeds** to transfer title to real property. This system is called the [Torrens System](#). The certificates of title are issued by the state and are similar to titles for personal property, such as vehicles and boats.

[Torrens system](#): A land registration system in which the local government is the keeper of all land and title records, and a land title serves as a certificate of valid ownership



If your preliminary title report indicates land is registered under the Torrens System (also called *Torrens land*), contact your State or Regional Office Lands staff as soon as possible, due to the extra time and effort needed to clear title.

Module 2: Methods of Property Conveyance – Knowledge Check

Knowledge Check

Key Term to Remember

- Constructive notice



Module 2: Methods of Property Conveyance – Involuntary Transactions



Involuntary Transactions:

In involuntary transactions, estates are transferred by operation of law and established through court proceedings. No deed is used.

While involuntary transactions are rarely used in the BLM or Forest Service, they are legal and valid tools that may be applied in appropriate situations.

Read on to learn more about [adverse possession](#), [prescriptive easements](#), [eminent domain](#) and [condemnation](#).



Contact your State or Regional Office Lands staff if you are considering using one of these methods.



Module 2: Methods of Property Conveyance – Involuntary Transactions



- **Adverse possession**: Under state laws, a method of acquiring title to real property by possession for a statutory period of time under certain conditions
- **Prescriptive easement**: An easement created from an open, adverse, and continuous use over a statutory period
- **Eminent domain**: The right by which a sovereign government may acquire private property for public use upon payment of reasonable compensation, with or without consent of the owner
- **Condemnation**: The act of the government exercising the right of eminent domain in taking property for public use, subject to the owner's right to just compensation



Module 2: Methods of Property Conveyance – Adverse Possession

Adverse Possession:

Fee simple title to an estate can be acquired by adverse possession, provided the following five elements are met:

- Actual **possession** of the property;
- **Non-permissive, hostile** or adverse use of the property;
- **Open and notorious** use of the property;
- **Continuous** use of the property for a statutory period;
- **Exclusive** use of the property.

State statutes differ with respect to the statutory period or required length of time of possession. Some states require as little as 5 years, while others require 20 or more. In some jurisdictions, the activities of successive possessors may be totaled, or tacked together, to meet the timeframe.



Check your state laws to determine the required length of possession.





Example: Adverse Possession

1. An absentee landowner owns an unused parcel of farmable land.
2. An adjacent landowner has grown crops on that land for over 30 years, well over the statutory requirement for adverse possession.
3. The adjacent landowner sues for adverse possession.
4. The court favors the adjacent landowner. The doctrine of adverse possession tends to reward the adverse possessor for productive use of the land, over the true landowner, who has not used the land, or has “slept on their rights.”



Module 2: Methods of Property Conveyance – Adverse Possession

Adverse Possession Against the Government:

Adverse possession cannot be enforced against lands owned by the United States. In other words, no one can use this process to claim ownership over land owned by the United States.

However, lands that are acquired by the United States are subject to adverse possession laws, but only if the adverse use met all the requirements for adverse possession *prior to acquisition* by the United States. It is important to note that any claim of adverse possession brought under these circumstances is **against the former landowner**, not against the United States.



When acquiring property, it is important to conduct a thorough physical inspection of the property for unrecorded and undocumented uses, and to ask the landowner about these uses. This helps to ensure that there are no potential adverse claims against the property.





Example A: Adverse Possession Against the Government

1. In 2000, a landowner builds a fence along their property boundary.
2. In 2015, the agency considers buying the adjacent property. The property inspection reveals that the fence is, in fact, encroaching on the property proposed for acquisition.

Further investigation reveals that the fence-building landowner has met all the statutory requirements for adverse possession.



After the United States takes title to the property, the adjacent landowner can make a claim against the previous landowner, under adverse possession laws.



Example B: Adverse Possession Against the Government

1. In 2015, an adjacent landowner builds a new house partially over the property boundary of lands the Forest Service acquired in 2000.



The landowner **cannot** claim adverse possession against the United States and must either remove the structure or seek administrative remedies, if available.

Download now

Module 2: Methods of Property Conveyance – Prescriptive Easements

Prescriptive Easements:

Prescriptive easements are acquired by prescription: that is, open and continuous possession over a statutory period.

Prescriptive easements differ from adverse possession in that only the legal right to **use** the property is established, **not title** to the property. Also, prescriptive easements typically do not require exclusive use.

Prescriptive easements must include the following basic elements:

- Open, notorious, adverse, and continuous use of another's land for the period of time prescribed in local statute.
- No use made with permission of the landowner can apply.

Prescription: In general, the acquisition of title or rights to a thing (especially an intangible thing such as the use of real property) by open and continuous possession over a statutory period



Module 2: Methods of Property Conveyance – Prescriptive Easements

Prescriptive Easements:

In order to prevent an adverse user from obtaining a prescriptive easement, the landowner must choose one of the following options:

- Try to **block the use** (by erecting physical barriers or excluding by written or verbal means), or
- **File suit** against the adverse user before the statutory period ends, or
- **Grant the adverse user permission** to use the property.



Once the statutory requirements have been met, the adverse user may claim an easement in the land. Once a suit has been brought, if the adverse user prevails, it is said that their prescriptive easement has been "**perfected**".





Good Advice: Prescriptive Easements



Prescriptive easements may be pursued by the United States in some jurisdictions. When considering acquiring easement rights for an existing road or trail with a history of public use, consider that easements by prescription may already exist.

State Office Lands staff and Solicitor should be consulted to determine if there may be a basis to claim existing public easements or rights of access.

- It may not be appropriate or necessary to expend federal funds to acquire easements where they already exist.
- Seeking to acquire easements may compromise any legal claims that could be made.



If a landowner blocks historic access, or files suit against the United States regarding access, contact your State or Regional Office

Module 2: Methods of Property Conveyance – Eminent Domain & Condemnation

Eminent Domain and Condemnation:

Eminent domain is the power by which a sovereign government, such as the United States, may acquire **private property for public use**, upon payment of compensation (referred to as [just compensation](#)), with or without consent of the owner.

The process of exercising the right of eminent domain is commonly referred to as condemnation. Condemnation is the legal process by which property is acquired for public purposes through legal proceedings, under the right of eminent domain.

You can find additional information on condemnation in the BLM Handbook 2100-1 Acquisition, Chapter X and FSH 5509.12, Chapter 20.



[Just compensation](#): In condemnation cases, the amount paid to the property owner



Module 2: Methods of Property Conveyance – Eminent Domain & Condemnation


Condemnation:

The condemnation process includes:

1. An identified **public need**,
2. An **offer to purchase**, and, if a negotiated purchase is not possible,
3. A **condemnation suit**.

When land is condemned, the property owner must be paid **just** compensation, be provided with **notice**, and given an opportunity to **defend their rights**.

Historically, most condemnation cases have been associated with acquiring **access**. However, more recently, condemnation is used to extinguish unknown third-party rights in the land that the United States wants to acquire, in a “friendly condemnation.”

 As with other involuntary transactions, be sure to involve your Regional Office Lands staff early in the process.



Module 2: Methods of Property Conveyance – Eminent Domain & Condemnation

Example: Eminent Domain and Condemnation

The agency needs to cross private land in order to access a trailhead. A public need has been identified therefore the agency contacts the adjacent property owners.



Owner A wants to sell their property; but **cannot agree on a price**.

- The agency may exercise eminent domain and condemn the property.
- The landowner receives just compensation awarded by court or through settlement.

Owner B wants to sell, but there are **clouds on the title**.

- The agency and owner agree to condemn the property in order to clear the title.
- The landowner receives just compensation, typically through a settlement agreement.

Owner C does not want to sell, for any price.

- The agency exercises eminent domain and condemns the property.
- The landowner receives just compensation awarded by the court.



Module 2: Methods of Property Conveyance – Knowledge Check

Knowledge Check

You should be able to describe **adverse possession against the government**, and **prescriptive easements**.

Key Terms to Remember

- Adverse possession
- Condemnation
- Eminent domain



Module 2: Methods of Property Conveyance – Inappropriate Taking of Land

Inappropriate Taking of Land:

Condemnation is the legal process for the taking of land. However, there are times when actions by the government result in inappropriate taking of private lands (or interests in lands).



Inappropriate taking can occur in two ways:

1. By **physically occupying** or using the land, or by
2. **Overregulation.** Regulatory taking occurs when government regulations limit the use of private property to such a degree that the property owner is deprived of the utility or economically reasonable use or value of their property, even though the regulation does not formally divest them of title to it.





Good Advice: Consequences of Inappropriate Taking

The consequences of inappropriately taking land can be costly to the government and can impair relations with BLM and FS neighbors.

- Structures built on non-government land may have to be torn down and removed, a **costly** action for the government and taxpayers.
- Landowners whose property has been inappropriately occupied by the government are less likely to work with the BLM or FS in a **cooperative** manner.
- It would be more difficult to protect Public lands and National Forest lands from **trespass** by private landowners, if the BLM or FS were trespassing on private property.



To avoid physically occupying private land, be sure to **involve your surveyor** early in the project to ensure you know where property lines are located.

Module 2: Methods of Property Conveyance – Encumbrances

Encumbrances, Outstanding Rights and Reservations:

An encumbrance is an interest in real property, held by other than present owner, that affects the title to the property.

When the agencies acquire lands but not the entire bundle of rights, this is because there is an encumbrance on the land. **An encumbrance is a claim against the property by someone other than the present owner.** Examples of encumbrances can include:

- [Mortgages](#)
- [Liens](#)
- Taxes
- Deed restrictions
- Easements
- [Reservations](#)
- Encroachments
- Licenses, leases or permits
- Other, unrecorded uses



This last section of Module 2 discusses Encumbrances, Outstanding Rights and Reservations.



Module 2: Methods of Property Conveyance - Encumbrances

Definitions:

- **Mortgage:** An interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt
- **Lien:** A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained.
- **Reservation:** A documented right retained by the grantor conveying real estate. A clause in a conveyance document by which the grantor retains some right, interest or profit in the estate granted.



Module 2: Methods of Property Conveyance - Encumbrances

Encumbrances can be:

- **Financial**, as in mortgages or taxes, or
- **Non-financial**, as in easements and reservations.
- **Permanent** and run with the land, as in "deed restrictions", or
- **Temporary**, as with licenses, leases or permits.

Encumbrances can be conveyed by a **written** deed or created by **verbal** permission from the landowner. When conveyed by written deed, an encumbrance is often referred to as an outstanding right or third party right.

Run with the land: A property right or restriction that passes with transfer of the land

Outstanding right: A right of record that was established and held by someone other than the person or entity from whom the property was acquired, such as a previous owner.



Module 2: Methods of Property Conveyance – Encumbrances/Outstanding Rights

Outstanding Rights:

An outstanding right is any right to use the property that is identified in a prior deed. The right may have been created by a reservation in a prior deed or by the current (or a prior) landowner, granting a right to use the land to another party.

Road and utility easements are common examples of outstanding rights.



Road easement



An outstanding right is a right of record that was established and held by someone other than the person or entity from whom the Government acquired the land.



Module 2: Methods of Property Conveyance – Encumbrances/Reservations

Reservations:

A [reservation](#) is a clause in a deed or other conveyance document whereby the grantor in that deed creates or reserves to themselves some right, interest, or profit in the estate granted and which did not exist prior to the conveyance.

For example, a landowner subdivides their property and wishes to retain ownership of one of the newly created parcels. To ensure they can access the property they reserve a road easement across the property that is being conveyed.

Outstanding Right vs. Reservation:

- An [outstanding right](#) was created in a **prior transaction**. The current landowner has no control over an outstanding right.
- A [reservation](#) is a right the current owner wants to retain after the **current transaction** is complete.



Both are single “sticks” in the entire bundle of rights.





Good Advice: Encumbrances

The BLM and FS are not prohibited from acquiring land that is encumbered but be aware that encumbrances can create administrative issues in the future if they are not properly documented at the time of acquisition.

- Encumbrances not legally authorized can potentially result in **adverse claims** against the property, as in the case of an encroachment.
- It is important not to characterize an encroachment or a permissive use of the property as a property right, as this can set up expectations on the part of a potential claimant that they have a legal right to use the property.



Questions about encumbrances should be addressed to your State or Regional Office Lands staff.

Module 2: Methods of Property Conveyance – Knowledge Check

Knowledge Check Review Questions

Key Terms to Remember

- Encumbrance
- Outstanding Right
- Reservation



Module 2: Methods of Property Conveyances - Summary

Module 2 Summary: Processes used to convey property



- Examples of [voluntary](#) and [involuntary](#) land transactions
- Two common kinds of deeds are [warranty](#) and [quitclaim](#)
- The [Torrens System](#) and its use of [certificates of title](#) rather than deeds in real property transaction
- The importance of [recording deeds](#)
- The requirements for [adverse possession](#)



Module 2 Summary – Processes used to convey property



- When adverse possession can and cannot be claimed **against the government**
- The purpose of **prescriptive easements** is to maintain public access to public lands
- The difference of **eminent domain, condemnation** and **just compensation**
- Two ways the government can **inappropriately take land** are by physical occupation and overregulation
- Examples of **encumbrances, outstanding rights**, and **reservations** in land transactions



Module 2: Methods of Conveyance



This concludes Module 2's lesson on the Methods of Conveyance. Join us again in Module 3 where you will learn about the various forms of Acceptable Title Evidence as well the Statutory Authority to Review Title.

We will have some knowledge checks along the way to help answer any questions you may have about title evidence.

